

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

September 5, 1984

Cy Epstein
Powers and Epstein
4101 MacDonald Avenue
Richmond, CA 94805

Re: A-84-224

Dear Mr. Epstein:

I am writing regarding the sample "blind trust" document that you submitted for the Fair Political Practices Commission's review.

FACTS

Your law partner, Thomas M. Powers, is on the Contra Costa County Board of Supervisors. At his request, you prepared a proposed "blind trust" document which will be used by Mr. Powers. Once Mr. Powers' property is placed in trust, you will serve as the trustee.

QUESTION PRESENTED

Does the language of the trust document satisfy the requirements of 2 Cal. Adm. Code Section 18235 (Reporting Interests in Blind Trusts)?

DISCUSSION

Under Section 18235, a public official can place his interests in real property and investments in a "blind trust." He must continue to disclose these interests,^{1/} and any income generated by them, until the trustee disposes of the interests. Once new interests are acquired, the trustee may not provide the official with any information concerning the replacement assets. The official has no disclosure or disqualification obligations regarding the new assets, unless the official learns of the replacement assets or the trust is revoked.

^{1/} He is also subject to disqualification as to these interests.

Mr. Cy Epstein
September 5, 1984
Page 2

In addition to the above provisions, Section 18235 sets out conditions that a blind trust must satisfy. I reviewed the trust document that you submitted and it appears to meet all of the requirements of Section 18235.

Thank you for seeking our advice in this matter. If we can be of any help in the future, please feel free to contact me at (916) 322-5901.

Very truly yours,

Janis Shank McLean
Janis Shank McLean
Counsel
Legal Division

JSM:nrm

POWERS & EPSTEIN

THOMAS M. POWERS
A PROFESSIONAL CORPORATION
CY EPSTEIN
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW
4101 MACDONALD AVENUE
RICHMOND, CA 94805

TELEPHONE
(415) 232-7377

June 29, 1984

Robert Blazier, Esq.
Enforcement Division
Fair Political Practices Commission
Post Office Box 807
Sacramento, CA 95804

RE: Supervisor Tom Powers' Blind Trust

Dear Enforcement Division:

Although I have addressed this letter to Robert Blazier, I have just been informed that he will no longer be with your offices after June 30th. Nonetheless, I was advised by your offices to address the letter to him and am doing so pursuant to that instruction. I am the law partner of Thomas M. Powers, currently a supervisor in Contra Costa County. Mr. Powers has asked me to prepare a "blind trust" complying with the requirements of 2 California Administrative Code Section 18235 and I have done so at his request.

I am now submitting a draft copy to your offices for review. My intent is to have the FPPC examine the trust document, criticize it and/or make such changes as it might wish to recommend.

If the trust document is satisfactory as presented, would you please so inform me in writing and I will have a final draft prepared and executed. If there are any questions, please feel free to call or write. Thank you for your cooperation.

Very truly yours,


CY EPSTEIN

CE:jm
Enclosure

JUN 28 1984

DECLARATION OF TRUST

THOMAS M. POWERS of Contra Costa County, California, herein called "Trustor," hereby transfers to CYRIL R. EPSTEIN of Contra Costa County, California, herein called "Trustee," all the property described in Exhibit A attached hereto, to constitute, together with any other property that may become subject to this Declaration of Trust, the Trust Estate, to be held, administered, and distributed by the Trustee as provided in this Declaration of Trust.

ARTICLE I: RIGHTS RESERVED TO TRUSTOR

Section 1.01. The Trustor shall have the right at any time, either during his life or by will at his death, to add other property acceptable to the Trustee to the trust created by this Declaration and such property, when received and accepted by the Trustee, shall become a part of the Trust Estate of this trust, subject to Article III.

Section 1.02. Subject to Article III, while living, the Trustor may, at any time and from time to time, by written notice signed by the Trustor and delivered to the Trustee:

(a) Revoke or change the interest of any beneficiary named in this Declaration or in any amendment to this Declaration, as to any trust created or to be created pursuant to this Declaration.

(b) Amend any provision of this Declaration or any amendment to this Declaration to such extent as may be acceptable to

the Trustee.

(c) Revoke in whole or in part any trust or trusts created by or to be created pursuant to this Declaration.

(d) Withdraw all or any part of the Trust Estate.

Section 1.03. All property now or hereafter conveyed or transferred to the Trustee to be held by the Trustee pursuant to this Declaration which was or is at the date of conveyance or transfer, community property of the Trustor and the Trustor's Spouse, or quasi-community property of the Trustor and the Trustor's Spouse, or separate property of the Trustor, shall be and remain, after transfer to the Trustee and on any withdrawal from the Trust Estate, the community property, quasi-community property, or separate property of the Trustor as it was before it was conveyed or transferred to the Trustee.

Section 1.04. Notwithstanding any other provision of this Declaration, during the joint lives of the Trustor and the Trustor's Spouse, the Trustee shall have no powers more extensive than those possessed by either spouse under Sections 5125 and 5127 of the California Civil Code over all community property of the Trustor and the Trustor's Spouse.

ARTICLE II: DISTRIBUTIONS BY TRUSTEE

Section 2.01. During the life of the Trustor, the Trustee shall pay to or apply for the benefit of the Trustor in monthly or other convenient installments all of the net income from the Trust Estate unless otherwise directed in writing by the Trustor.

Section 2.02. Should the Trustor, at any time, be incompe-

tent or in the judgment of the Trustee unable for any reason to act in his own behalf, the Trustee may in its discretion pay to or apply for the benefit of the Trustor, in addition to the net income from the Trust Estate, such amounts from the principal of the Trust Estate, up to the whole thereof, as the Trustee may from time to time deem necessary or advisable for the Trustor's use and benefit.

Section 2.03. On the death of the Trustor, the Trustee shall pay either from the income or principal of the Trust Estate, at his discretion, the expenses of the Trustor's last illness, funeral, burial, and any federal estate tax and any state death taxes that may be due by reason of the Trustor's death, unless the Trustee, in his discretion determines that other adequate provisions have been made for payment of those expenses and taxes.

Section 2.04. Upon the death of the Trustor and payment of the expenses of the last illness and funeral of the Trustor, this trust shall terminate and all the Trust Estate then in the possession of the Trustee shall be distributed by the Trustee free of trust to the executor of the estate of Trustor.

ARTICLE III: CREATION OF AND PROVISIONS

GOVERNING BLIND TRUST

Section 3.01. By reason of the election of the Trustor to political office, the Trustor desires that this trust be a blind trust which complies with the provisions of 2 Cal. Adm. C Section 18235. Therefore, the following provisions shall be in

effect during the time of the Trustor's government service.

Section 3.02. In accordance with the provisions of Article IV, the Trustee shall have sole authority to manage the trust estate, including the power to invest and reinvest the assets of the trust estate and including the power to dispose of and acquire trust assets, as the Trustee, in the Trustee's sole discretion, deems advisable, and the Trustee is expressly prohibited from consulting or notifying the Trustor regarding such actions.

Section 3.03. The above provisions notwithstanding, the Trustee is directed to notify the Trustor in writing, prior to March 1 of each year, of the date of disposition and value at disposition of any investment or interest in real property originally transferred to this trust by the Trustor.

Section 3.04. The Trustee is prohibited from disclosing to the Trustor or the Trustor's Spouse any information concerning the assets of this trust, except for the information required under subparagraph 3.03.

Section 3.05. The Trustee shall deliver to the Trustor, prior to March 1 of each year, a statement signed under penalty of perjury indicating that he has not revealed to the Trustor any information regarding the trust except that required pursuant to section 3.03, and further stating that the trust is in compliance with 2 Cal. Adm. C Section 18235.

Section 3.06. The entire trust shall cease to be operative when the Trustor's government service ceases or when the Trustor

delivers to the Trustee written notice that the Trustor no longer wishes the trust to comply with 2 Cal. Adm. C Section 18235.

ARTICLE IV: POWERS OF TRUSTEE

Section 4.01. Subject to the provisions of Article III, the Trustee is authorized to retain in the trust for such time as he may deem advisable any property, received by him from the Trustor, whether or not such property is of the character permitted by law for the investment of trust funds, and to operate at the risk of the Trust Estate any business or property received by him from the Trustor.

Section 4.02. Subject to the provisions of Article III the Trustee shall with respect to any and all property which may at any time be held by him in trust pursuant to this Declaration, whether such property constitutes principal or accumulated income of any trust provided for in this Declaration, have power, exercisable in the Trustee's discretion at any time and from time to time on such terms and in such manner as Trustee may deem advisable, to:

(a) Sell, convey, exchange, convert, improve, repair, manage, operate, and control, any and all personal or real property received in trust or placed in trust as a result of the activities of the Trustee.

(b) Lease for terms within or beyond the term of any trust provided for in this Declaration and for any purpose, including exploration for and removal of gas, oil, and other minerals; and

enter into any covenants and agreements relating to the property so leased or any improvements which may then or thereafter be erected on such property.

(c) Encumber or hypothecate for any trust purpose by mortgage, deed of trust, pledge, or otherwise.

(d) Carry insurance of such kinds and in such amounts at the expense of the trusts provided for in this Declaration as the Trustee may deem advisable.

(e) Commence or defend at the expense of any trust provided for in this Declaration such litigation with respect to any such trust or any property of the Trust Estate as he may deem advisable.

(f) Invest and reinvest the trust funds in such property as the Trustee may deem advisable, whether or not of the character permitted by law for the investment of trust funds, specifically including, but not by way of limitation, interests in any common trust fund or funds now or hereafter established and administered by the Trustee solely for the investment of trust funds.

(g) Vote and give proxies to vote any securities, including stock of the Trustee, held by him in trust pursuant to this Declaration, having voting rights.

(h) Pay any assessments or other charges levied on any stock or other security held by him in trust pursuant to this Declaration.

(i) Exercise any subscription, conversion, or other rights or options which may at any time attach, belong, or be given to

the holders of any stocks, bonds, securities, or other instruments held by him in trust pursuant to this Declaration.

(j) Participate in any plans or proceedings for the foreclosure, reorganization, consolidation, merger, or liquidation of any corporation or organization that has issued securities held by him in trust pursuant to this Declaration, and incident to such participation to deposit securities with and transfer title of securities to any protective or other committee established to further or defeat any such plan or proceeding.

(k) Enforce any mortgage or deed of trust or pledge held by him in trust pursuant to this Declaration and at any sale under any such mortgage, deed of trust, or pledge to bid and purchase at the expense of any trust provided for in this Declaration any property subject to such security instrument.

(l) Compromise, submit to arbitration, release with or without consideration, and otherwise adjust any claims in favor of or against any trust provided for in this Declaration.

(m) Subject to the limitations of Article III and the faithful performance of its fiduciary obligations, to do all such acts, take all such proceedings, and exercise all such rights and privileges as could be done, taken, or exercised by an absolute owner of the trust property.

Section 4.03. Subject to the provisions of Article III the Trustee shall have power to borrow money from any person, firm, or corporation, for any trust purpose on such terms and conditions as the Trustee may deem proper and to obligate the trust

to repay such borrowed money.

Section 4.04. The Trustee is authorized to purchase securities or other property from and to make loans and advancements from the Trust Estate with or without security to the executor or other representative of the Trustor's estate.

Section 4.05. Subject to the provisions of Article III the Trustee may hold securities or other property subject to this Declaration in his name as Trustee under this Declaration, in his own name without a designation showing him to be Trustee under this Declaration or in the name of his nominee, or the Trustee may hold such securities unregistered in such condition that ownership will pass on delivery.

Section 4.06. Except as otherwise specifically provided in this Declaration, the Trustee shall have full power and authority to determine, in his discretion, what shall constitute principal of the Trust Estate, gross income from the Trust Estate, and net income of the Trust Estate distributable under the terms of this Declaration. The determination of the Trustee as to what constitutes principal, gross income or net income of the Trust Estate shall, except as may be otherwise expressly provided in this Declaration, shall be conclusive and binding on all persons in any manner interested in any trust created or to be created pursuant to this Declaration.

Section 4.07. All property taxes, assessments, fees, charges, and other expenses incurred by the Trustee in the administration or protection of the trusts created by this Declara-

tion, including the compensation of the Trustee provided for in this Declaration, shall be a charge on the Trust Estate and shall be paid by the Trustee prior to final distribution of the Trust Estate in full out of the principal or in full out of the income of the Trust Estate, or partially out of the principal and partially out of the income of the Trust Estate, in such manner and proportions as the Trustee may deem to be advisable. The determination of the Trustee to pay such expenses and charges from the principal or income of the Trust Estate or partially from each shall be conclusive and binding on all persons in any manner interested in any trust created by or pursuant to this Declaration.

Section 4.08. The Trustee may make such elections under the federal and state income and estate tax laws applicable to the Trust Estate as the Trustee determines should be made for the benefit of the trust beneficiaries, generally. No compensating adjustments between principal and income shall be made even though the elections made under the tax laws by the executor of Trustor's estate or the Trustee may affect, beneficially or adversely, the interests of one or more beneficiaries. The actions of the Trustee shall be binding upon all beneficiaries.

ARTICLE V: ADMINISTRATIVE PROVISIONS

Section 5.01. Whenever the right of any beneficiary to payments from the net income or principal of the Trust Estate shall terminate, either by reason of death or other cause, any accrued or undistributed net income from the Trust Estate undistributed

by the Trustee on the date of such termination shall be held, administered, and distributed by the Trustee in the same manner as if such income had accrued and been received by the Trustee after the date such beneficiary's right to receive payments from the trust terminated.

Section 5.02. In any case where payment is to be made to or for the benefit of a minor, the Trustee may make such payment directly to the minor as an allowance, or to the parent or guardian of the minor, or to any other person having the care and control of the minor or with whom the minor may reside, and the receipt of any such person for any such payment shall be a complete discharge of the Trustee as to the amounts so paid.

Section 5.03. In any case where payment is to be made to an incompetent, the Trustee may make such payment to the guardian for the person or the conservator of the person of such incompetent.

Section 5.04. The terms "incompetent," "incompetency," or other words of similar import shall be construed as used in this Declaration to refer to all cases where a conservator of the person or property of any person having rights under this Declaration has been appointed by a court of competent jurisdiction for any reason except minority of such person. Any person having rights under this Declaration shall be deemed competent and his competency shall be unquestioned by the Trustee until a court of competent jurisdiction has appointed a guardian for the person or estate of such person or a conservator of the person or pro-

perty of such person.

Section 5.05. On any final or partial distribution of the assets of the Trust Estate and on any division of the assets of the Trust Estate into shares or partial shares, the Trustee may distribute or divide such assets in kind, may distribute or divide undivided interests in such assets, or may sell all or any part of such assets and make distribution or division in cash, in kind, or partly in cash and partly in kind. The decision of the Trustee, either prior to or on any division or distribution of such assets, as to what constitutes a proper division of such assets of the Trust Estate shall be binding on all persons in any manner interested in any trust provided for in this Declaration.

Section 5.06. The terms "issue" and "children" as used in this Declaration mean lawful issue and include legally adopted children.

ARTICLE VI: RESIGNATION AND COMPENSATION OF TRUSTEE

Section 6.01. The Trustee shall have the right to resign at any time, and on such resignation the Trustor shall appoint a successor Trustee. In the event of the failure, refusal or inability of the Trustor to appoint such a successor Trustee, the Trustee or any beneficiary of any trust provided for in this Declaration may secure, at the joint expense of all trusts provided for in this Declaration and then in existence, the appointment of a successor Trustee by a court of competent jurisdiction.

Section 6.02. Any successor Trustee appointed as provided in Section 6.01 of this Declaration because of the death, resignation, or other act of the Trustee, shall, on such appointment being made, immediately succeed to all title of the Trustee to the Trust Estate and to all powers, rights, discretions, obligations, and immunities of the Trustee under this Declaration with the same effect as though such successor were originally named as Trustee in this Declaration.

Section 6.03. The Trustee shall receive as compensation for his services under this Declaration one percent (1%) of the book value of the trust property annually, payable quarterly from _____, 1984.

ARTICLE VII: CONSTRUCTION OF TRUST

Section 7.01. The trust created by this Declaration has been accepted by the Trustee in the State of California, will be administered by the Trustee in California, and the validity, construction, and all rights under this Declaration shall be governed by the laws of the State of California.

Section 7.02. Should any provision of this Declaration be or become invalid or unenforceable, the remaining provisions of this Declaration shall be and continue to be fully effective.

Section 7.03. Any notices or other communication required or permitted by this Declaration to be delivered to or served on the Trustee shall be deemed properly delivered to, served on, and received by the Trustee when personally delivered to the Trustee, or, in lieu of such personal service, when deposited in